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AMP PLUS, INC. d/b/a Elco Lighting

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DMF, Inc., a California corporation,

Plaintiff,

v.

AMP PLUS, INC., d/b/a ELCO
LIGHTING, a California corporation;
ELCO LIGHTING, INC., a California
corporation,

Defendants.

AMP PLUS, INC., d/b/a ELCO
LIGHTING, a California corporation;

Counterclaimant,

v.

DMF, Inc., a California corporation,

Counter-Defendant.

Case No. 2:18-cv-07090-CAS-GJS

[Hon. Christina A. Snyder]

**DECLARATION OF BENJAMIN
ARDESTANI IN SUPPORT OF
OPPOSITION TO PLAINTIFF DMF,
INC.'S MOTION FOR
PRELIMINARY INJUNCTION**

Date: January 7, 2019

Time: 10:00 a.m.

Location: Courtroom 8D,
350 West First Street, Los Angeles, CA

**REDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL**

1 I, Benjamin Ardestani, declare as follows:

2 1. I am the Director of Engineering for AMP Plus, Inc. dba Elco Lighting
3 (“Elco”). I provide this declaration in support of Elco’s Opposition to Plaintiff DMF,
4 Inc.’s (“DMF”) Motion for Preliminary Injunction (“DMF’s Motion”). I have
5 personal knowledge of the matters contained herein. If called as a witness in this
6 action, I could and would testify to these matters.

7 2. I have been Elco’s Director of Engineering since 2016. Prior to that, I
8 was Elco’s Product Manager for 13 years. I have been employed at Elco since 2003.

9 3. I earned a B.S. Degree in Electrical Engineering from a very highly
10 ranked technical university in Iran in 1982.

11 4. Since 2003, I have held a Professional Electrical Engineer license (Lic.#
12 E16733) from the California State Board of Professional Engineers and Land
13 Surveyors.

14 5. Prior to working for Elco, I worked for Tri Star Lighting Company for
15 eight years as product manager and designed many different commercial light fixtures
16 and retrofit kits.

17 6. As Elco’s Director of Engineering, I am involved in, responsible for and
18 knowledgeable about the designs and specifications for Elco’s various lighting
19 products, the development of those products, and the performance of those products in
20 the field. I supervise a team of two engineers who assist me with the foregoing.

21 7. I am familiar with the design and development of Elco’s ELL product
22 line of light emitting diode (“LED”) modules. These modules (the “ELL modules”)
23 include model nos. ELL0827, ELL0830, ELL0834, ELL0840, ELL1127, ELL1130,
24 ELL1135 and ELL1140, which can be used in residential and commercial
25 applications.

26 8. I am also familiar with Underwriter Laboratories (“UL”) product testing
27 and product safety certification requirements for lighting products, including LED
28

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lights, and UL product testing and product safety certification of Elco's ELL modules.

9. I have reviewed redacted versions of DMF's Motion and supporting declarations. In its Motion, DMF asserts that Elco's ELL modules pose a safety hazard because (1) the modules use a 250 volt fuse that is not safe for 277 volt applications; and (2) the modules lack a ground wire and thus are not properly grounded.

10. Both of these assertions by DMF are wrong.

11. The fuse Elco uses in its ELL modules is a [REDACTED] fuse designed and manufactured by [REDACTED]

12. The [REDACTED] fuse has been tested and certified by Underwriters Laboratory (UL) as well as four other safety certification authorities (VDE, CQC, PSE, and KC). The voltage rating and interrupting rating of the [REDACTED] varies from one certification authority to the other.

13. The [REDACTED] is UL-certified for different ratings. Attached hereto as Exhibit 1 is a true and correct copy of the [REDACTED] for the [REDACTED]

14. For its application in the ELL modules, the [REDACTED] is UL-certified and rated at [REDACTED], with an interrupting rating of [REDACTED].

15. The [REDACTED] used in Elco's ELL modules is more than adequate for use in 277-volt applications because the fuse is rated to [REDACTED].

[REDACTED]

The fuse is a slow-blow fuse implemented on the input of the circuit design, before any other component for the purpose of short circuit protection. The fuse contains an element that melts and breaks the circuit in the event of excessive current above the fuse's [REDACTED] current rating.

1 16. [REDACTED], the manufacturer stamps
2 only one of the voltage ratings on the fuse – the 250 volt rating at 1 amp. This is the
3 marking on the fuse which reads, “T1A250V”. That marking does not mean the fuse
4 is only rated at 250 volts.

5 17. [REDACTED]
6 [REDACTED]

7 18. Elco has not received any customer complaints about the fuse used in
8 ELL modules. If that fuse was, as DMF contends, inadequate for 277 voltage
9 applications, Elco would have received numerous customer complaints about the
10 fuses.

11 19. With respect to the lack of a ground wire on Elco’s ELL modules, there is
12 no need for one. UL also tested and certified Elco’s ELL modules without a ground
13 wire, as designed by Elco. Elco’s ELL modules passed UL testing for grounding
14 without a ground wire. [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] . A true and correct copy of [REDACTED]
20 [REDACTED]

21 [REDACTED] is attached hereto as Exhibit 2.
22 The test results mean that the product can be safely installed and operated in 120-277
23 voltage applications.

24 20. Elco has not received any customer complaints about the lack of a ground
25 wire for ELL modules. If the lack of a ground wire was, as DMF contends, a safety
26 hazard, Elco would have received numerous customer complaints about it.

27 21. I also note that many similar LED products do not have a ground wire
28 and have been UL certified. These products have been on the market and in use safely

1 for many years. For example, attached hereto as Exhibit 3 is a true and correct copy of
2 product information about Rayon Lighting's "VersaTrim" and "Pulldown" LED
3 recessed residential and commercial lighting products as well as Rab Lighting
4 HALITE series and Intense Lighting LC4 series products similar to DMF's DRD2
5 product line. I obtained these documents off of each respective manufacturer's
6 websites. These products offered by these manufacturers do not have a ground wire.
7 For example, the specification sheets for Rayon Lighting's model no. RFL4 4" LED
8 recessed module, which competes with DMF's DRD2 product, does not have a ground
9 wire. Rayon Lighting's model nos. RHL4-ICAT 4" IC air-tight new construction
10 LED housing, and RHL4S-ICAT 4" IC air-tight shallow new construction LED
11 housing, do not have ground wires either.

12 22. Furthermore, prior to LED lights, incandescent lighting products
13 frequently did not have (and still do not have) a ground wire and were (and are) UL
14 certified. In other words, the lack of a ground wire for Elco's ELL modules does not
15 present a safety issue.

16 23. A large rectangular area of the document is completely redacted with black ink, covering approximately 12 lines of text from line 16 to line 26.

27 24. I observed the ELL test unit during the testing while I was in my office,
28

1 which was almost all of the time during normal working hours (8 a.m. to 5:30 p.m.
2 each day). At no time did the ELL test unit flicker or flash. At no time did the fuse
3 blow. At no time did the ELL test unit malfunction in any way. I was unable to
4 duplicate the events alleged by DMF.

5 25. DMF has been marketing its OneFrame system, which includes the
6 DRD2 module with a DMF junction box, by representing to customers and potential
7 customers that DMF's junction boxes and the DRD2 modules are compliant with and
8 fire-rated up to 2 hours under UL Standard 514A, and that because of that, the
9 customer does not need to build fire boxes to house the recessed light fixtures, but can
10 simply install DMF's OneFrame system in any ceiling system, or install the DRD2
11 module in any existing standard size junction box.

12 26. Attached hereto as Exhibits 6 and 7, respectively, are true and correct
13 copies of DMF's 2016 and 2017 brochures regarding its OneFrame system. DMF
14 posted these brochures on its website (www.dmflighting.com) and circulated hard
15 copies of the brochures to the lighting industry. For example, on page 7 of each
16 brochure (Exh. 6 at page 104; Exh. 7 at page 122), DMF states that the OneFrame
17 system is "2 hour fire rated."



26 27. DMF claims in the brochure on page 9 of each brochure (Exh. 6 at page
27 105; Exh. 7 at page 123) that, with the OneFrame system, "There's no need for costly
28

fire rated boxing.”

There's no need for costly fire rated boxing

28. DMF states on page 8 of each brochure (Exh. 6 at page 105; Exh. 7 at page 123):



All the ratings you need for multifamily applications

Beyond spatial limitations, multifamily applications pose challenges that most LED downlighting isn't suited for. The specially designed OneFrame with DRD2 LED makes these problems disappear. With Fire, Sound, Air Tight, Concrete Tight, IC, and Wet Location Ratings, you can be confident that it's compliant in a wide range of situations.

29. DMF also states on page 9 of each brochure (Exh. 6 at page 105; Exh. 7 at page 123):

Installation Savings

The combination of the OneFrame and DRD2 LED delivers more than just performance – it delivers exceptional value as well.

Thanks to the frame's design, there's no need to construct a fire rated box that requires specialized labor. In addition, these boxes must be made with rated drywall and sealed with fire barrier caulk, creating extra material costs. However, the OneFrame is all set as soon as it's installed.

30. DMF also states on page 19 of each brochure (Exh. 6 at page 110; Exh. 7 at page 128) that its model no. DRDHNJD junction box that is part of the OneFrame system is certified under UL Standard 514A “up to 2 hour fire rating.”

Listings	IC rated. cULus Listed. ENERGY STAR® qualified. Title 24 compliant. ASTM E283 certified Air Tight. STC/IIC Sound Rated. UL Listed for Wet Location. CEC listed. DRDHNJD metallic outlet box certified UL514A up to 2 hour fire rating. DRDHNJC certified UL Concrete Tight.
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31. DMF's specification sheet for its DRD2 module, a true and correct copy of which is attached hereto as Exhibit 8, also states that its model no. DRDHNJ

1 junction box recommended for use with the DRD2 module is fire-rated under UL
2 Standard 514A up to 2 hours:

3 **LISTINGS:** IC rated (750 lm module). cULus Listed. ENERGY STAR®
4 qualified. California Title 24 JA8 compliant. ASTM E283 certified Air Tight.
5 DRDHNJ metallic outlet box certified UL514A up to 2 hour fire rating.
6 UL Listed for Wet Location. CEC listed.

7 32. The above representations by DMF are inaccurate and misleading for
8 several reasons. First, UL Standard 514A is strictly an electrical standard metallic
9 boxes and has nothing to do with fire resistance rating. It does not contain any
10 requirements for fire ratings and it does not permit a metallic outlet box to be marked
11 as fire rated. Nor does UL Standard 514A cover recessed down lighting applications.
12 A true and correct copy of UL Standard 514A is attached hereto as Exhibit 9.

13 33. Second, DMF failed to inform customers and potential customers that its
14 OneFrame system, or just its DRD2 module alone, must be installed in a fire-rated
15 ceiling system to comply with fire resistance requirements. One cannot simply install
16 those products in any ceiling and comply with fire resistance requirements. DMF's
17 product literature is also misleading in that it suggests all recessed applications must be
18 fire-rated, and use of its OneFrame system, including the DRD2 module, accomplishes
19 that. This is inaccurate.

20 34. Third, DMF's junction boxes in fact do not comply with UL Standard
21 514A because the open holes and slits in the boxes are larger than what is allowed
22 under that standard. Clause 10.3.1 of UL Standard 514A requires the following:

- 23 • the total area of all open holes in the box cannot exceed 0.45 square
24 inches;
- 25 • the total area of all open holes in the *bottom* of the box cannot exceed
26 0.33 square inches;
- 27 • the total are of all open holes in any one *side* (not the bottom) of the box
28

1 cannot exceed 0.2 square inches;

- 2 • the area of a pryout hole/slot cannot exceed 0.04 square inches; and
3 • the size of *any* open hole/slot cannot exceed 0.27 inches in any
4 dimension.

5 35. The slots on DMF's junction boxes used in its OneFrame system, and
6 which DMF recommends for use with DRD2 modules, exceed 0.27 inches, in
7 violation of UL Standard 514A. Exhibit 10 attached hereto are true and correct
8 photographs I took of DMF's model nos. DRDHNJ and DRDHNJD junction boxes,
9 with a caliper measuring the length of an open slot on each of those boxes. The open
10 portion of the slot on the DRDHNJ measures 0.7270 inches in length, which exceeds
11 the allowable maximum of 0.27 inches. The open portion of the slot on on the
12 DRDHNJD measures 0.8415 inches, which also exceeds the allowable maximum of
13 0.27 inches.

14 36. DMF recently revised its product literature and its website. These
15 revisions acknowledge that DMF's prior representations about the 2 hour fire rating
16 for its OneFrame system and its DRD2 module were false and misleading.

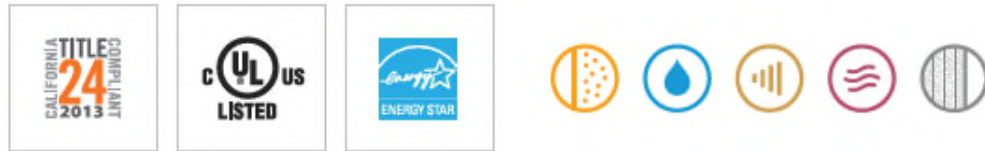
17 37. DMF also revised its brochure for the OneFrame system. A true and
18 correct copy of that brochure, dated August 2018, which I obtained from DMF's
19 website, is attached hereto as Exhibit 11. The revised brochure now states, on page 6
20 (Exh. 11 at page 253) that the OneFrame system is, "Code compliant for use in
21 appropriate fire-rated assemblies for up to 2-hours."



24 Code compliant for use in
25 appropriate fire-rated assemblies,
26 up to a maximum of 2-hours
27
28

39. On page 7 of the revised brochure (Exh. 11 at page 253), DMF removed the language stating that the OneFrame system is “2 hour fire rated” from its prior brochure (compare with Exh. 6 at page 104; Exh. 7 at page 122).

40. DMF also revised the brochure by removing the word “Fire” in the last sentence of the below excerpt from page 8 (Exh. 11 at page 254):



All the ratings you need for multifamily applications

Beyond spatial limitations, multifamily applications pose challenges that most LED downlighting isn't suited for. The specially designed OneFrame with DRD2 LED makes these problems disappear. With Sound, Air Tight, Concrete Tight, IC, and Wet Location Ratings, you can be confident that it's compliant in a wide range of situations.

41. On page 19 of the revised brochure (Exh. 11 at page 259), DMF removed the language, “DRDHNJD metallic outlet box certified UL514A up to 2 hour fire rating.” However, the revised brochure still claims that DMF’s model no. DRDHNJD complies with UL Standard 514A.

Listings	IC rated. cULus Listed. ENERGY STAR® qualified. Title 24 compliant. ASTM E283 certified Air Tight. STC/IIC Sound Rated. UL Listed for Wet Location. CEC listed. DRDHNJD metallic outlet box certified UL514A. DRDHNJC certified UL Concrete Tight.
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42. DMF also recently changed its website so that the webpage pertaining to its OneFrame system now states, “Code compliant for use in appropriate fire-rated assemblies, up to a maximum of 2 hours.” A true and correct copy of DMF’s webpage regarding its OneFrame system, at the URL <https://www.dmflighting.com/product/oneframe/> is attached hereto as Exhibit 12.

43. DMF also recently revised its specification sheets for the DRD2 module and OneFrame system components. True and correct copies of the specification sheets

1 for DMF's DRD2 module, DRDHNJ junction box, DRDHNJC junction box and
2 Surface Frame products that I obtained from DMF's website on November 30, 2018,
3 are attached hereto, collectively, as Exhibit 13. The revised DRD2 specification sheet
4 now state that the DRD2 module is, "Code compliant for use in appropriate fire-rated
5 assemblies for up to 2-hours."

6 **LISTINGS:** cULus Listed. Code compliant for use in appropriate fire-rated
7 assemblies for up to 2-hours. STC/IIC Sound Rated. ASTM E283 certified
8 Air Tight. IC rated (750 lm module).

9 44. However, this and other revised specification sheets still contain false and
10 misleading information about DMF's junctions boxes marketed with its DRD2 module
11 as part of DMF's OneFrame system. For instance, in Exhibit 13 DMF continues to
12 state that model no. DRDHNJ junction box recommended for use with the DRD2
13 module that the junction box is fire-rated under UL Standard 514A up to 2 hours:

14 **JUNCTION BOX:** Metallic outlet box certified UL514A up to 2 hour fire
15 rating. Equipped with (4) 1/2" trade size knockouts (two side, two top) to
16 allow straight conduit runs. Approved for 8 (four in, four out) #12 AWG
17 90°C through wiring conductors.

18 45. Although DMF recently deleted some of the misrepresentations about its
19 OneFrame system and DRD2 modules, it distributors continue to make those
20 misrepresentations to the public. Attached hereto as Exhibit 14 are true and correct
21 copies of DMF distributor Walter's Wholesale's website pages advertising DMF's
22 junction boxes as being fire-rated up to 2 hours. For instance, Walter's Wholesale's
23 website represents that DMF's model no. DRDHNJ New Construction IC Air-Tight
24 LED Recessed Down Light Junction Box Frame Kit 120/277 Volt (SKU: 468465) "is
25 fire rated to withstand fire for up to 2 hours."

26 46. Attached as Exhibit 15 are true and correct copies of pages from DMF
27 distributor LBC Lighting's website advertising for DMF's model DRDHNJ New
28

1 Construction Fire Rated Junction Box for 4", 5" and 6" LED Module. LBC Lighting's
2 website states the DMF's junction box is "Fire rate for up to 2 hours." The website
3 lists DMF's DRD2 modules as "accessories" for the junction box.

4 47. DMF also continues to market its DRD2 module by misrepresenting that
5 its metallic boxes model nos. DRDHNJ, DRDHNJD, DRDHNJO, and DRDHNJC are
6 "Recessed LED Downlights." DMF specifications sheets attached hereto as Exhibit
7 13 state "Recessed LED Downlight" at the top right hand corner.

8 48. DMF also continues to inaccurately label its metallic junction boxes as
9 "TYPE IC INHERENTLY PROTECTED." Attached hereto as Exhibit 16 are true
10 and correct copies of photographs showing that labeling on DMF model nos.
11 DRDHNJ and DRDHNJD.

12 49. UL Standard UL514A applies to metallic outlet boxes, flush-device
13 boxes, floor boxes, concrete boxes, extension rings, covers, conduit bodies, bar
14 hangers, bar-hanger assemblies, and all accessories whose principal function is for
15 support of boxes. UL Standard UL514A does not cover recessed down lighting
16 applications. DMF markets and sells its metallic outlet boxes as recessed downlight
17 fixtures in which they include labels for IC (insulation contact), airtight, and
18 compatibility table for recessed modules and trims, as shown in Exhibit 17. However,
19 these ratings are unique and specific to UL Standard 1598. Recessed down lighting
20 applications are evaluated and certified under UL Standard 1598, which is a separate
21 standard. Use of these items in insulated ceiling installations, as shown in a variety of
22 places in DMF's product literature and on its website, may pose a fire hazard.

23 I declare under penalty of perjury under the laws of the United States of
24 America and the State of California that the foregoing is true and correct.

25 Executed this 3rd day of December 2018, at Vernon, California.

26
27 By: *B H Ardestani*
28 Benjamin Ardestani